

**ORDINANCE NO. 2015-24**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS, AMENDING CHAPTER 46 (FIRE PREVENTION AND PROTECTION) OF THE CODE OF ORDINANCES, ORDINANCE NO. 2005-07, TO ADD ARTICLE V (PUBLIC SAFETY AND FIRE EMERGENCY RESPONSE COST RECOVERY), AUTHORIZING THE IMPOSITION OF FEES TO RECOVER COSTS ACTUALLY INCURRED IN RESPONDING TO CERTAIN PUBLIC SAFETY AND FIRE EMERGENCY INCIDENTS; DESCRIBING COST RECOVERY PROCEDURES; PROVIDING FOR CIVIL AND CRIMINAL REMEDIES AND A RIGHT TO APPEAL; PROVIDING A PENALTY CLAUSE, SAVINGS/REPEALING CLAUSE, SEVERABILITY CLAUSE AND AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.**

WHEREAS, the City Council of the City of Wylie, Texas ("City Council") has investigated and determined that the increasing costs of conducting adequate emergency rescue operations and providing fire protection services in the City of Wylie, Texas ("City"), including services required to respond to extraordinary and dangerous occurrences, impairs the City's ability to provide all necessary emergency services; and

WHEREAS, the City Council finds that it would be advantageous and beneficial to the City and its citizens to authorize the recovery of costs actually incurred by the City in responding to public safety and fire emergency incidents to better protect the public health, safety and welfare and to protect and preserve public funds and tax dollars; and

WHEREAS, the City Council desires to assess fees that compensate the City for its costs in providing such services; and

WHEREAS, the City Council finds that the fees established herein are levied solely for the purpose of providing funds to help defray the costs of the services and equipment for which the fees are assessed.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WYLIE, TEXAS:**

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendment to the Code of Ordinances, Chapter 46 (Fire Prevention and Protection) to Add Article V (Public Safety and Fire Emergency Response Cost Recovery). Chapter 46 (Fire Prevention and Protection) of the City's Code of Ordinances, Ordinance No. 2005-07, is hereby amended to add Article V (Public Safety and Fire Emergency Response Cost Recovery) as set forth below:

**“ARTICLE V. PUBLIC SAFETY AND FIRE EMERGENCY  
RESPONSE COST RECOVERY**

**Sec. 46-66. Purpose.** This article authorizes the imposition of fees to recover costs actually incurred by the City in responding to certain public safety or fire emergency incidents to protect the City from extraordinary expenses resulting from the use of City resources in response to such incidents.

**Sec. 46-67. Definitions.** Unless the context specifically indicates otherwise, the meaning of the terms used in this article shall be as follows:

*Assessable costs* mean those costs for services incurred by the City in connection with a response to a public safety or fire emergency incident, including, but not limited to, the actual labor and material costs of the City (including, without limitation, employee wages, fringe benefits, administrative overhead, costs of equipment, costs of equipment operation, costs of materials, costs of transportation, costs of material disposal and costs of contracted labor) whether or not the services are provided by the City or by a third party on behalf of the City; service charges and interest; attorneys’ fees, litigation costs and any costs, charges, fines or penalties to the City imposed by any court or state or federal governmental entities.

*Bomb threats* mean the verbal or written threat of a bomb or other explosive device which if discharged as threatened would violate a federal, state or local law.

*Emergency assistance* means emergency medical, public safety, police, fire or civil defense services.

*Excessive requests for emergency assistance* means any request for emergency assistance made to a particular location or premises if such location or premises has requested emergency assistance more than five (5) times in the preceding thirty (30) days.

*False alarm* means any automated or manual device designed to request or summon emergency assistance which is activated intentionally or otherwise in the absence of an actual need for emergency assistance. The determination that there was no actual need for emergency assistance shall be made by the most senior person responding to a false alarm; provided, however, that a false alarm shall not be deemed to have occurred if (i) caused by an act of God, i.e., a lightning storm, (ii) it originates from a motor vehicle alarm system, or (iii) has not occurred more frequently than three (3) times in a calendar month or four (4) times in a calendar year.

*Hazardous materials* mean those elements, substances, wastes or by-products, including, but not limited to, combustible liquid, flammable gas, explosives, flammables, poisons, organic peroxides, oxidizers, pyrophorics, unstable reactive matter, water reactive matter, petroleum products, anti-freeze, polychlorinated biphenyls and asbestos, which are or are potentially harmful to the environment or human or animal life, or which pose an unreasonable or imminent risk to life, health or safety of persons or property, or

to the environment as determined by the fire chief or the senior fire official of the City in charge at the scene.

*Hazardous material incident or emergency* means any occurrence, incident, activity, accident or emergency where a release of hazardous materials occurs or is reasonably imminent and where the fire chief or his or her designee has so declared such activity, accident or emergency a hazardous material incident or emergency.

*Illegal fire* means a fire set or determined to have been set in violation of a federal, state or local law and shall include an arson fire and a fire set in violation of a "no burning" ban or order. An illegal fire does not include an unintentional fire or fire caused by an act of God, i.e., a lightning storm.

*Lake incident or emergency* means any occurrence, incident, activity, accident or emergency occurring in or around a lake or other body of water where emergency assistance is requested or required, including, but not limited to, the stranding of a boat or other water craft or any incident requiring the recovery of property or an individual from beneath the surface of water.

*Motor vehicle* means any self-propelled or towed vehicle designed or used on the public streets, roads and highways to transport passengers or property which is required to be registered for use upon such public streets, roads and highways and for the purposes hereof all trailers or appurtenances attached to any motor vehicle.

*Public safety or fire emergency incident* means (i) excessive requests for emergency assistance, (ii) a false alarm, (iii) a hazardous material incident or emergency, (iv) an illegal fire, (v) bomb threats, (vi) threats of harm to oneself or others, (vii) a structure demolition, (viii) a utility line failure, or (ix) a lake incident or emergency.

*Release* means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, leaching, dumping or disposing into the environment, including, but not limited to, the air, soil, groundwater and surface water.

*Responsible party* means any individual, firm, corporation, association, partnership, commercial entity, consortium, joint venture, government entity or any other legal entity responsible for a public safety or fire emergency incident or any owner, tenant, occupant or party in control of real and personal property from which, onto which or related to which there is a public safety or fire emergency incident and their heirs, estates, successors and assigns.

*Structure demolition* means the tearing down of a structure damaged by fire which must in the opinion of the fire chief or his or her designee be promptly demolished following the fire to protect public safety.

*Threats of harm to oneself or others* mean the verbal or written threat of physical harm to oneself or another or another's property which if carried out would be a violation of federal, state or local law.

*Utility line failure* means the disabling of any transmission or service line, cable, conduit, pipeline, wire or the like used to provide, collect or transport electricity, natural gas, communication or electronic signals (including, but not limited to, telephone, computer, cable television and stereo signals or electronic impulses), water or sanitary or storm sewage if the owner or party responsible for the maintenance of such utility line does not respond within one (1) hour to a request to repair or correct such failure.

**Sec. 46-68. Cost recovery authorization and procedure.**

- (a) The City may recover all assessable costs in connection with a public safety or fire emergency incident from any or all responsible parties, jointly or severally.
- (b) The city manager or his or her designee shall determine the total assessable costs and shall in consultation with other city personnel involved in responding to the public safety or fire emergency incident determine whether to assess any, all or part of such costs against any of the responsible parties. In making such determination, the following shall be considered:
  - (1) the total assessable costs;
  - (2) the fees set forth in the cost recovery fee schedule established and maintained pursuant to section 46-69 below;
  - (3) the risk the public safety or fire emergency incident imposed on the City, its residents and their property;
  - (4) whether there was any injury or damage to person or property;
  - (5) whether the public safety or fire emergency incident required evacuation;
  - (6) the extent the public safety or fire emergency incident required an unusual or extraordinary use of city personnel and equipment, and
  - (7) whether there was any damage to the environment.
- (c) After consideration of the factors in subsection (b) immediately above, the city manager or his or her designee may allocate assessable costs among and between responsible parties, including allocating all or some of such costs jointly and severally against more than one responsible party, regardless of whether a responsible party has other legal liability therefor or is legally at fault.

- (d) If the city manager or his or her designee determines not to assess all or a part of assessable costs against a responsible party, such determination shall not in any way limit or extinguish the liability of the responsible party to other parties.

**Sec. 46-69. Cost Recovery Fee Schedule.** The fire chief or his or her designee is authorized and directed to establish and maintain a cost recovery fee schedule reflecting the reasonable costs of responding to a public safety or fire emergency incident, and the fees stated therein shall not exceed the City's actual cost in responding to a public safety or fire emergency incident. A copy of the cost recovery fee schedule shall at all times be maintained on file with the fire department and published on the City's website and shall have the same legal effect as if adopted by ordinance of the City Council.

**Sec. 46-70. Billing and collection of assessable costs.** After determining to assess assessable costs against a responsible party, the city manager or his or her designee shall mail an itemized invoice to the responsible party at its last known address or to the responsible party's insurer at the insurer's address if provided. Such invoice shall be due and payable within thirty (30) days of the date of mailing and any amounts unpaid after such date shall bear a late payment fee equal to one percent (1%) per month or fraction thereof that the amount due and any previously imposed late payment fee remains unpaid. If a responsible party shall appeal assessable costs pursuant to section 46-71, such costs, if upheld, in whole or in part, shall be due and payable thirty (30) days from the date of determination of the appeal and any late payment fees shall apply thereafter.

**Sec. 46-71. Procedure for appealing assessable costs.** Any responsible party who receives an invoice for assessable costs shall have an opportunity to meet with the city manager or his or her designee to request a modification of assessable costs. The responsible party shall request in writing such meeting within seven (7) calendar days of the date of the invoice assessing the assessable costs. If after meeting with the city manager or his or her designee the responsible party is still not satisfied, he or she may request an opportunity to appear before the City Council to further request a modification of assessable costs. A responsible party who desires to appear before the City Council must first meet with the city manager or his or her designee as provided above and shall file a written request to appear before the City Council with the city secretary within seven (7) calendar days of the date of the meeting with the city manager. Upon receipt of such request, the city secretary will place the responsible party on the agenda of the next regularly scheduled City Council meeting, which meeting is at least fourteen (14) calendar days after the date on which the responsible party files the request to appear. Any filed request to appear shall specifically identify and explain all reasons why the responsible party believes the assessed costs should be modified. Any reason, basis or argument for modification of assessable costs not set forth in the request to appear shall be deemed waived by the responsible party. Failure to timely file a written request to appear shall constitute a waiver of the responsible party's right to appear before the City Council and shall further constitute the responsible party's agreement to pay the assessable costs invoiced. After a responsible party has been given an opportunity to

appear before it, the City Council shall promptly determine whether to confirm, modify or void the payment of assessable costs invoiced.

**Sec. 46-72. Other remedies.** In addition to the remedy set forth in section 46-70 above, the City shall be entitled to pursue any other remedy or may institute any appropriate action or proceeding in a court of competent jurisdiction as permitted by law to collect assessable costs from a responsible party.

**Sec. 46-73. No limitation of liability.** The recovery of assessable costs pursuant this article does not limit the liability of a responsible party under applicable local, state or federal law.

**Secs. 46-74 – 46-89. Reserved.”**

**SECTION 3: Penalty.** Any person, firm, corporation or entity violating or refusing to comply with any provision of this Ordinance, as it exists or may be amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding five hundred and no/100s dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude the City from filing suit to enjoin the violation. The City retains all legal rights and remedies available to it under local, state and federal law.

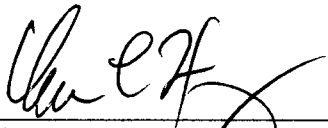
**SECTION 4: Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof, regardless of whether any one or more sections, subsections, sentences, clauses or phrases is declared unconstitutional and/or invalid.

**SECTION 5: Savings/Repealing.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict, but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of such ordinances shall remain in full force and effect.

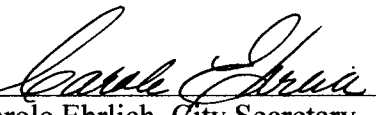
**SECTION 6: Effective Date.** This Ordinance shall become effective from and after its adoption and publication as required by law and the City Charter.

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**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
WYLIE, TEXAS on this 14th day of July, 2015.**

  
Eric Hogue, Mayor

**ATTEST:**

  
Carole Ehrlich, City Secretary



*DATE OF PUBLICATION: July 22<sup>nd</sup>, 2015, in the Wylie News*